

**Board of Registration of Podiatry
Minutes of the April 11, 2017 Public Meeting
1000 Washington Street, Boston, MA 02118
Room 1C**

Board Members Present:

LeRoy Kelley, DPM Chair
Bruce Bonnell, MD Member
Kenneth Leavitt, DPM Member
Raymond Murano, DPM Secretary

Administrative Staff Present at Various Times:

Michael Hawley, Executive Director
Sheila York, Board Counsel
Anne Driscoll, Investigator Supervisor

Board Members Absent:

None

Members of the Public Present:

Kimberly Giese, Esq.
Jennifer L. Buchanan, DPM

I. Housekeeping Matters and Evacuation Procedures

Dr. Kelley, the Chair, observed a quorum of board members to be present and opened the meeting at 10:05 am.

Board Counsel Sheila York informed attendees of the evacuation procedures.

II. Vote on Minutes:

Dr. Kelley moved to accept the minutes from the February 14, 2017 meeting as presented. Dr. Bonnell seconded the motion. The motion passed unanimously.

III. New Items:

a. Board Chair

- 1) Dr. Kelley noted that continuing education courses pertaining to reviews of family practice, geriatrics, and general surgery were submitted for approval by Kenneth Leavitt, DPM. Dr. Leavitt recused himself from participation in this matter and left the room. Dr. Murano has reviewed and recommended approval of the submitted courses. Dr. Leavitt moved to accept the CE course for approval, Dr. Murano seconded the motion. The motion passed unanimously.
Dr. Leavitt returned to the meeting.
- 2) Dr. Murano noted that a Continuing Education course on Biomechanics was submitted for approval by Frank Santopietro, DPM. Dr. Murano has reviewed and recommended approval of the submitted course. Dr. Leavitt moved to accept the CE course for approval, Dr. Murano seconded the motion. The motion passed unanimously.

- 3) Dr. Kelley informed the Board that he had been asked what a retiring podiatrist must do with patient records. Dr. Kelley advised the podiatrist that patients should receive written notice regarding his plans to retire and how to request a copy of their records. Dr. Kelley further advised the podiatrist to contact the Board for a formal response regarding record retention periods. Board Counsel noted that the Board would require that patient records be retained for at least the period set forth in Board regulations or turned over to the patient, but a podiatrist should also check with laws and requirements that are outside the Board's jurisdiction. Investigator Driscoll noted that Board regulations at 5.05(1) requires that records be maintained for five years from the date of the last visit. Board Counsel discussed drafting a written policy to provide guidance to retiring podiatrists.

Dr. Leavitt also asked Board Counsel to explain what the legal definition is of "medical record." Board Counsel noted for the limited purpose of Board regulations the requirements of a "medical record" was stated in 4.04, but a prudent podiatrist would check with all other applicable laws as well.

b. Board counsel, Sheila York's report to the board:

- 1) Update on EO 562 regulation changes – The Board's amendments to 249 CMR became effective January 13, 2017. Attorney York confirmed that the Board members received a hard copy version of the new regulations.
- 2) Reciprocity Evaluations – none.
- 3) Delegation of Authority: Board Counsel explained that the DPL recommends that boards periodically update delegation of authority to DPL staff and that she had distributed the following proposed language for board review:

Delegate the authority to execute Order to Show Cause Notices, Consent Agreements, and Final Decisions on behalf of the Board and to sign off on case closings primarily to the Board's Executive Director and secondarily to the Deputy Director of Policy and Boards of the Division of Professional Licensure, or in the extended absence of both the Executive Director and the Deputy Director to Board Counsel, provided the terms and/or charges are consistent with those previously approved by the Board at a meeting and approved by the Chair or his or her designee. This delegation of authority shall remain in effect and force unless and until overridden by a subsequent vote of the board.

Delegate the authority to issue a written Order of Summary Suspension, pending a 10-day hearing pursuant to G.L. c.112, §65B, primarily to its Executive Director and secondarily to the Deputy Director of Policy and Boards at the Division of Professional Licensure or in both those individual's extended

absence to Board Counsel, after determining, in consult with the Chair and based upon credible sworn affidavits and documentary evidence, that a licensee's continued practice poses an immediate and serious threat to the public health, safety, or welfare. This delegation of authority shall remain in effect and force unless and until overridden by a subsequent vote of the board.

Delegate the authority to act as a Presiding Officer for all adjudicatory proceedings, conducted pursuant to 801 Code Mass. Regulations. §§1.00 et seq., in all cases where the Board has voted to issue an Order to Show Cause or where an Order to Show Cause will be issued, to a Division of Professional Licensure Hearings Officer. This delegation of authority shall remain in effect and force unless and until overridden by a subsequent vote of the board.

Delegate authority primarily to the Board's Executive Director and secondarily to the Deputy Director of Policy and Boards, or in the extended absence of both the Executive Director and the Deputy Director, to Board Counsel to issue a Final Decision ordering revocation of the Respondent's license to practice, or in the case of an unlicensed Respondent, assessing the maximum fine permitted by law, in cases where a DPL Hearing Officer has entered a finding of default against the Respondent. This delegation of authority shall remain in effect and force unless and until overridden by a subsequent vote of the board

After discussion, a motion was made by Dr. Murano to approve the delegation of authority as stated above. The motion was seconded by Dr. Leavitt. The motion passed unanimously.

- b. **Discussion:** None.
- d. **Open session for topics not reasonably anticipated by the chair 48 hours in advance of meeting.** None.

IV. Investigative Session - Closed Session under MGL ch. 112, Section 65C:

At 10:29 am, Dr. Leavitt moved to enter investigative session [Closed Session under MGL ch. 112, Section 65C] to consider a counter offer on: PD-16-004, and to discuss open investigative matter: PD-17-000111. Dr. Kelley seconded the motion. The motion passed unanimously.

At the end of the closed session, the open meeting resumed. Report of action taken during investigative session:

PD-16-004: Dismissed. Dr. Leavitt recused.
PD-17-000111: Dismissed.

Dr. Kelly moved to adjourn the meeting at 10:43 am. Dr. Bonnell seconded. The motion passed unanimously with Dr. Leavitt absent.

Respectfully submitted,

A handwritten signature in black ink, reading "Michael Hawley". The signature is fluid and cursive, with a large loop at the end of the last name.

Michael Hawley, Executive Director

List of Documents Used at the Public Meeting:

1. Agenda dated April 11, 2017
2. Draft of minutes dated February 14, 2017
3. Proposed Delegation of Authority Language